## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LAMONT HALL,

Plaintiff,

2:20-CV-01431-CCW

VS.

MICHAEL ZAKEN, ET AL.

Defendants.

## **MEMORANDUM ORDER**

This case has been referred to United States Magistrate Judge Patricia L. Dodge for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(l)(A) and (B), and Local Rule of Civil Procedure 72.

On July 6, 2021, the Magistrate Judge issued a Report, ECF No. 40, recommending that Defendants' Motion to Dismiss Plaintiff's Complaint, ECF No. 28, should be granted in part and denied in part. Service of the Report and Recommendation was made on Plaintiff, and no objections have been filed.

After a de novo review of the pleadings and documents in the case, together with the Report and Recommendation, it is hereby **ORDERED** that Defendants' Motion to Dismiss Plaintiff's Complaint, ECF No. 28, is granted in part and denied in part as follows:

- 1. Count III is dismissed with prejudice because amendment would be futile.
- 2. All claims against Defendant Moore are dismissed with prejudice.
- Plaintiff's claims in Count II against defendants Lewis, Durco and Lukachyk are dismissed with prejudice.
- 4. Plaintiff's official capacity claims against all defendants are dismissed with prejudice other than the claim for injunctive relief as it relates to Secretary Wetzel.

5. Any claims that Plaintiff may have sought to assert that are related to a false misconduct report and confiscation of property are dismissed with prejudice.

6. Plaintiff's claims in Counts I and II against Defendant Gilmore are dismissed without

prejudice and with leave to amend.

7. Defendants' motion to dismiss Count I against Defendants Lewis, Durco and Lukachyk

is denied.

8. Plaintiff is granted leave to amend his Complaint if he seeks to assert a First

Amendment retaliation claim and/or a conspiracy claim under the Eighth Amendment

with respect to Defendants Lewis, Durco and Lukachyk.

It is further ORDERED that the Magistrate Judge's Report and Recommendation, ECF

No. 40, is adopted as the Opinion of the District Court.

DATED this 5<sup>th</sup> day of August, 2021.

/s/ Christy Criswell Wiegand Christy Criswell Wiegand United States District Judge

Cc: LAMONT HALL

JG-3187 SCI Greene 175 Progress Drive Waynesburg, PA 15370

LAMONT HALL Greene County Jail 855 Rolling Meadows Rd Waynesburg, PA 15370

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